

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WRHC Broadcasting Corp.)	Control No. 9808327
)	NAL/Acct. No. x32080008
Licensee of Station WRHC(AM))	
Coral Gables, Florida)	
Facility ID #73945)	

FORFEITURE ORDER

Adopted: July 21, 2000

Released: July 25, 2000

By the Chief, Enforcement Bureau:

1. This Forfeiture Order ("Order") imposes a forfeiture against WRHC Broadcasting Corp. ("WBC") in the amount of twenty-two thousand five hundred dollars (\$22,500). It also directs WBC to inform us within thirty (30) days whether it is continuing to operate Station WRHC in an unauthorized manner. We conclude that WBC willfully and repeatedly violated sections 73.1615, 73.1620 and 73.1745 of the Commission's rules.¹ The violations include operation of a directional AM station, purportedly in accordance with a construction permit, without first requesting and obtaining authority from the Commission, commencement of program tests prior to staff approval, and operation at variance from licensed facilities. The violations also resulted in interference to another station.

BACKGROUND

2. Following receipt of a complaint from Interstate Broadcasting Company, Inc. ("Interstate"),² licensee of Station WQEW(AM), New York, New York,³ that its nighttime operations were experiencing interference attributable to Station WRHC, the staff conducted an investigation which revealed that WRHC had repeatedly broadcast at night from an unlicensed location in an unauthorized manner (omnidirectionally and on a different frequency) with power well above that authorized by its license. The investigation further revealed that such operation had occurred repeatedly notwithstanding Interstate's notification to WBC that WRHC was causing interference. Finally, the investigation disclosed that, for years, WRHC had been broadcasting during the day at an unauthorized location on an unlicensed frequency.

¹ 47 C.F.R. §§ 73.1615, 73.1620 and 73.1745.

² On November 30, 1998, following Commission staff approval of a *pro forma* assignment, the licensee became The New York Times Electronic Media Company. For ease of reference, we will continue to refer to the licensee of Station WQEW as Interstate.

³ WQEW is a Class A station operating on 1560 kHz at 50 kW. See sections 73.21(a)(1) and 73.25(b) of the Commission's rules, 47 C.F.R. §§ 73.21(a)(1) and 73.25(b).

Accordingly, on March 21, 2000, we issued a Notice of Apparent Liability (“NAL”) to WBC.⁴ In addition to proposing a forfeiture of \$22,500, the NAL notified WBC that its apparent unauthorized operations had to cease; otherwise, further proceedings could ensue, which could result in revocation of the station’s license.

3. In its May 8, 2000, response to the NAL, WBC acknowledges that it operated substantially as alleged, and it concedes that it is continuing to operate without authority. WBC apparently seeks to justify its current operations by claiming that discontinuance of station operations would bring it economic disaster. Regarding the proposed forfeiture, WBC argues that reduction is warranted because it believed its operations were permitted by virtue of its construction permit. Further, WBC contends that it ceased nighttime operations upon notification that they were causing interference. Finally, WBC argues that, although it made full disclosure of its operations to Commission staff, it was never advised to cease operations but simply to regularize operations. In view of the foregoing, and considering the “hardships”⁵ with which it was forced to contend, WBC believes that the proposed upward adjustment for intentional violation should be eliminated and that the base forfeitures should be reduced substantially.

4. Section 503(b)(2)(D) of the Act directs us to consider two distinct matters in determining the appropriate amount of a forfeiture.⁶ First, as to the violations, we must take into account their nature, circumstances, extent, and gravity. Second, with respect to the violator, we must consider the degree of culpability, history of prior offenses, ability to pay, and such other matters as justice may require.

5. The record before us reflects that WBC has never operated from its licensed daytime site and that, following eviction from its nighttime site in February 1996, WBC began operating WRHC from its construction permit site in the fall of 1996 on 1560 kHz both during the day and at night. WBC never obtained Commission authorization for these operations. WBC also began to operate WRHC since the end of December 1997 or the beginning of January 1998 with a new transmitter set at 5 kW. However, WBC never obtained Commission authorization to do so. Further, notwithstanding Interstate’s complaints, WBC continued to broadcast, without Commission authority, for periods of time before local sunrise and after local sunset between August 1998 and February 1999. Moreover, with respect to WBC’s failure to obtain authority for its daytime operations, the Mass Media Bureau, on August 5, 1999, dismissed WBC’s July 1999 license application (File No. BL-19990707DC) as patently defective. Although WBC petitioned for reconsideration of that action, resubmitted the application, and contended that it supplied sufficient information to obtain program test authority, the Mass Media Bureau, by letter dated March 7, 2000,

⁴ WRHC Broadcasting Corp., 15 FCC Rcd 5551 (Enf. Bur. 2000).

⁵ The referenced hardships included Hurricane Andrew, litigation, and an airplane crash that temporarily affected access to an authorized site.

⁶ 47 U.S.C. § 503(b)(2)(D). *See also* In the Matter of the Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087, 17100-01 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“Forfeiture Policy Statement”).

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determined that the resubmitted application contained several serious discrepancies. Accordingly, the Mass Media Bureau informed WBC that further action on the application would be withheld to allow WBC to file a corrective amendment. The Mass Media Bureau further informed WBC that failure to supply the amendment would result in dismissal of its application. To date, WBC has not submitted the requested amendment. Even though the Mass Media Bureau has not authorized program tests, as required in this situation, WBC has continued to operate WRHC during the day.

DISCUSSION

6. Section 73.1745 of the Commission's rules⁷ provides that no station shall operate at times or with modes of power other than those specified in the station's license. Section 73.1615(d) of the Commission's rules, 47 C.F.R. § 73.1615(d), provides that a licensee of AM stations holding a construction permit which authorizes both a change in frequency and directional facilities must request and obtain authority from the Commission prior to using the facilities authorized by the permit. Finally, section 73.1620(a)(4) of the Commission's rules, 47 C.F.R. § 73.1620(a)(4), provides that an AM permittee with a directional antenna that has requested program test authority may not commence program test operations prior to the issuance of staff approval. The evidence before us shows that WBC has not operated Station WRHC in accordance with the terms of its license since, at least, the date of its last renewal. WBC has not used its licensed daytime facilities since their destruction by Hurricane Andrew, and WBC has not used the licensed nighttime facilities since its eviction from that site. Nevertheless, and despite the absence of special temporary authorization ("STA")⁸ or any other authority, WBC has broadcast on WHRC from its daytime construction permit site on 1560 kHz from the beginning of the current license term to the present. Compounding matters, at various times up to February 1999, WBC operated WRHC at night at an unauthorized power, which resulted in interference to WQEW. Finally, even when WBC sought program test authority, it did not wait for staff approval before operating with the facilities described in its license application, as required in these circumstances.

7. Section 503(b) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 503(b)(1),⁹ provides that any person who willfully or repeatedly fails to comply with the terms and conditions of his license or the Commission's rules shall be liable for a forfeiture penalty. In this context, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules,¹⁰ while "repeatedly" means more than once.¹¹ Considering the

⁷ 47 C.F.R. § 73.1745.

⁸ See section 73.1635 of the Commission's rules, 47 C.F.R. § 73.1635.

⁹ 47 U.S.C. § 503(b)(1). See also section 1.80(a)(1) and (2), 47 C.F.R. § 1.80(a)(1) and (2).

¹⁰ See Jerry Szoka, 14 FCC Rcd 9857, 9865 (1999); Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

¹¹ See Hale Broadcasting Corp., 79 FCC 2d 169, 171 (1980).

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information before us, we conclude that WBC knew that it was operating WRHC at variance from its license; that, for years, WBC had not requested or received permission to operate with the facilities specified in its permit; and that, even when WBC had submitted such a request, it continued to operate the facilities despite the fact that it did not receive staff approval as required. We therefore reject WBC's contention that its violations were not intentional. Rather, we conclude that WBC's violations were both willful and intentional. Further, we conclude that each of the violations was repeated. Finally, we note that WBC has apparently ignored our warning in paragraph 8 of the NAL to cease unauthorized operation of Station WRHC or risk further enforcement proceedings. Accordingly, we will direct WBC to inform us within 30 days after release of this Order whether, and, if so, when, it ceased unauthorized operations on Station WRHC. If WBC has continued to operate Station WRHC unlawfully, WBC may be subject to a proceeding to revoke the station's license.

8. In assessing a forfeiture, we take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,¹² which include the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Commission's forfeiture guidelines currently establish base amounts of \$7,000 for interference, \$4,000 for using an unauthorized frequency, and \$4,000 for operation at an unauthorized location.¹³ The guidelines include "upward adjustment criteria," such as intentional violation and repeated or continuous violation. After considering the information before us, we conclude that, as proposed, the base amounts, which total \$15,000, should be adjusted upward by 50 percent to take into account the licensee's intentional and continuous violations. In this regard, we contrast the situation now before us with the licensee in PNI Spectrum, LLC, DA 00-1335 (Enf. Bur., released June 19, 2000). Among other things, that licensee, upon discovery of its mistaken construction and operation of land mobile stations, voluntarily ceased service at significant cost to itself. Consequently, we reduced a proposed forfeiture from \$78,000 to \$25,000. WBC, on the other hand, continued to operate from its daytime construction permit site, both during the day and often at night, even after it had been specifically put on notice (and then admitted) that its operations were not authorized. Once WBC received such notice its continued operation of WRHC must be deemed intentional irrespective of whether the staff explicitly advised WBC to cease operations.¹⁴ Thus, unlike the PNI licensee, WBC has not demonstrated that its conduct warrants a reduction of its proposed forfeiture. Quite the opposite, WBC's intentional misconduct justifies use of the upward adjustment criteria cited in the NAL. The proposed forfeiture is fully justified and should be imposed.

ORDERING CLAUSES

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ See Forfeiture Policy Statement, *supra* note 6.

¹⁴ See Bay Broadcasting Corporation, DA 00-1190 (Enf. Bur., released May 31, 2000)

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9. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Act,¹⁵ and sections 0.111, 0.311 and 1.80 of the Commission's rules,¹⁶ WRHC Broadcasting Corp. FORFEIT to the United States the sum of twenty-two thousand five hundred dollars (\$22,500) for violating the terms and conditions of its license and the Commission's rules requiring operation within the parameters set forth in the license, and requiring express permission prior to a permittee's operation or commencement of program tests involving directional AM facilities and/or a change in frequencies.

10. IT IS FURTHER ORDERED THAT payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules,¹⁷ within thirty (30) days of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.¹⁸ Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above. Requests for payment of the full amount of this forfeiture under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁹

11. IT IS FURTHER ORDERED THAT, within thirty (30) days of the release of this Order, WBC state in writing whether, and, if so, when, it has ceased unauthorized operations on Station WRHC. WBC shall file its response with the Secretary of the Commission and direct a copy thereof to: Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3B-443, Washington, D.C. 20554.

12. IT IS FURTHER ORDERED THAT a copy of this Order shall be sent by Certified Mail Return Receipt Requested to WRHC Broadcasting Corp., in care of Lawrence M. Miller, Esq., Schwartz, Woods & Miller, 1350 Connecticut Avenue, N.W., Suite 300, Washington, D.C. 20036-1717.

FEDERAL COMMUNICATIONS COMMISSION

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.

David H. Solomon
Chief, Enforcement Bureau